

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**James City County Government Center, Building F Board Room**  
**August 3, 2017**  
**5:00 PM**

---

**A. CALL TO ORDER**

Mr. William Geib called the meeting to order at 5:00 p.m.

Mr. Geib presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA is a five-member Board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the zoning administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the Board is always required to pass a motion. Variances are not granted unless the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, and the variance is not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance is requested because the physical condition of the property or improvements thereon restrict the utilization of the property, the following additional requirements must be met: (i) the property must have been acquired in good faith and any hardship cannot be created by the applicant; (ii) the granting of the variance cannot be substantially detrimental to nearby properties; and (iii) the condition or situation cannot be so general or recurring as to make the formulation of an amendment to the Ordinance reasonably practicable to address the condition or situation. If the Board does authorize a variance, it may impose conditions regarding the location, character or any other features it may deem necessary in the public interest.

**B. ROLL CALL**

Ms. Christy Parrish called the roll.

Present:

Mr. William Geib  
Mr. David Otey, Jr.  
Mr. Stephen Rodgers  
Mr. Marvin Rhodes

Absent:

Mr. Ron Campana, Jr.

Others Present:

Mr. John Rogerson, Senior Zoning Officer  
Ms. Christy Parrish, Zoning Administrator  
Mr. Max Hlavin, Assistant County Attorney

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. Case No. ZA-0003-2017. Stonehouse Elementary School Canopy Setback 3651  
Rochambeau Drive Granting a Variance on James City County Real Estate Tax Map Parcel  
No. 1310100020

Mr. John Rogerson presented the staff report.

Mr. Andrew Smolak of Moseley Architects, on behalf of the Williamsburg-James City County Public Schools, has applied for a variance to Section 24-535.4, Setback Requirements, to reduce the setback from the public right-of-way from 60 feet from the center of the right-of-way to zero feet to allow for the construction of a canopy over the existing sidewalk, to bring the existing building into compliance with the setback requirements and to allow for future improvements as necessary. This property is currently zoned PL, Public Lands, and can further be identified as James City County Real Estate Tax Map No. 1310100020.

In January 1999, the James City County Board of Supervisors approved a Special Use Permit (Exhibit A) to allow for the construction of a new Williamsburg-James City County Public School which is known as Stonehouse Elementary School. The site plan for the construction of the school was approved on June 11, 1999. At the time of the site plan approval, the proposed bus loop was located interior to the property. This bus loop was not a public right-of-way and there were no setback requirements from the bus loop.

In October 2002, the Board of Supervisors passed a Resolution (Exhibit B) which dedicated the existing bus loop to the Virginia Department of Transportation (VDOT) Secondary Street Program. Once the bus loop was accepted into the State Secondary Street Program, it became a public right-of-way and the Zoning Ordinance requires setbacks from any street right-of-way.

Section 24-535.4 of the Zoning Ordinance requires a setback of 35 feet from any street right-of-way that is 50 feet or greater or a setback of 60 feet from the centerline of the street if the street right-of-way is less than 50 feet in width. The right-of-way along the sidewalk where the proposed canopies are to be placed is 40 feet in width.

In order to have a variance granted, the applicant must prove by a preponderance of the evidence that the standard for a variance as defined in Virginia Code § 15.2-2201 has been met (that the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, the variance is not contrary to the purpose of the Ordinance, and the variance does not result in a change of use), and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the "County Code") would unreasonably restrict the utilization of the property; or
2. The granting of a variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the Ordinance; and
  - a. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
  - b. The granting of the variance will not be of substantial detriment to adjacent property

and nearby properties in the proximity of that geographical area;

c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

d. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to Subdivision 6 of §15.2-2309 or the process for modification of a Zoning Ordinance pursuant to Subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

The applicant provided a narrative and other information explaining their case for meeting the requirements for granting a variance and those documents have been included in the packet as Article C, D, E, F and G.

In this case, staff believes the strict application of the terms of the Zoning Ordinance would not unreasonably restrict the utilization of the property, as the property has been put to use by the construction of Stonehouse Elementary School. However, staff recognizes the dedication of School House Lane into the State's Secondary Street Program had unintentional consequences that created the setback issue after the site plan was approved and construction of the school was completed.

The strict application of the terms of the Zoning Ordinance does not unreasonably restrict the utilization of the property. The property has been put to use by the construction of Stonehouse Elementary School. Therefore, staff cannot support this application. However, staff recognizes that the bus loop, which is now a public right-of-way, is entirely interior to the property and the primary use of the bus loop is to drop off students. If the Board chooses to approve this variance application, staff would recommend approval in accordance with one of the attached resolutions. Resolution A reduces the setback requirement along the entire right-of-way interior to the property to allow for the construction of a canopy over the existing sidewalk, to bring the existing building into compliance with the setback requirements and to allow for future improvements as necessary. Resolution B reduces the setback requirement along a portion of the right-of-way to allow for the construction of a canopy over the existing sidewalk and to bring the existing building into compliance with the setback requirements.

Mr. William Geib stated that it appears that the Board of Supervisors' Resolution accepting the bus loop into the Secondary Street Program was done primarily for street maintenance.

Mr. John Rogerson stated he thought that the purpose of the bus loop being incorporated into the Secondary Street Program was to allow the general public to be able to turn around without making a three-point-turn.

Mr. Marvin Rhodes asked what was located on the adjacent properties.

Mr. Rogerson stated that the adjacent properties contained Williamsburg Christian Academy, Faith Fellowship Assembly of God Church and a large field.

Mr. David Otey asked why the applicant requested that the setback be reduced to zero which would allow the project to extend into the middle of the right-of-way.

Mr. Rogerson stated that was an error. The request should be to reduce the required setback from 60 feet from the center of the right-of-way to 20 feet which would reduce the setback to the edge of the right-of-way for the construction of the canopy.

Mr. Rhodes asked why the Board of Supervisors did not adjust the setbacks when they added the bus loop to the Secondary Road Program.

Mr. Max Hlavin stated that if the Board of Supervisors changed the setbacks for this situation, it would change the setbacks on all lands that are zoned PL, Public Lands.

Mr. Rogerson explained that there are two ways to correct the problem. The Board of Supervisors could pass a Resolution taking the bus loop out of the public right-of-way system, or the applicant could apply for a variance to the required setbacks.

Mr. Stephen Rodgers inquired about the language in the Board of Supervisor's Resolution (Exhibit A) where it stated: "the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage." He stated that it appears the language in the Resolution allowed for VDOT to be able to maintain the bus loop.

Mr. Rodgers asked if the canopy was in the original plans for the school or if it was a new proposal.

Mr. Rogerson said the canopy was a new proposal.

Mr. Rodgers asked if there was a resolution to grandfather the existing portion of the school building that was in the setback.

Mr. Rogerson explained that the portion of the school that was in the setback was currently legally nonconforming since the school was built before the bus loop was a public right-of-way.

Mr. Geib stated that if one measures 60 feet from the centerline of the bus loop, part of the school would be currently in the setback.

Mr. Rogerson stated that by granting the variance it would make the existing portion of the school that is in the setback conforming.

Mr. Geib asked if there were any further questions for staff. There being none, Mr. Geib opened the Public Hearing.

Mr. Alan Robertson, Facilities Manager of the Williamsburg-James City County School Division stated that the proposed canopy was a new project to help protect students from the weather when walking to and from the busses. He stated that they were unaware that the bus loop was within the right-of-way and they have maintained and repaired the bus loop since the school was constructed. He further stated that this issue was brought to their attention during the site plan review process.

Mr. Kenny Durrett, Moseley Architects, explained the scope of the project. He stated that the request to reduce the setback to zero could be modified to 20 feet since the proposed canopy will come within 6-12 inches of the curb face and will not extend beyond the curb face.

Mr. Geib asked if Mr. Robertson could foresee any proposed expansion of the school in

the future.

Mr. Robertson responded yes it was possible that the school would need to be expanded in the future and the expansion could be in the area of the bus loop.

Mr. Rhodes stated that one of the requirements of granting a variance was that there must be a hardship. He asked Mr. Robertson what he considered the hardship to be in this case.

Mr. Robertson stated that the request came from the PTA, parents and the principal of the school to help protect the children from the weather when they are going to and from the busses.

Mr. Otey said that he attended James Blair and he remembers that there was a canopy at the bus drop-off and pick up area.

Mr. Rhodes stated there are two resolutions included in the packet. He stated he felt that Resolution A was too broad because it reduced the setback along the entire bus loop. He asked Mr. Robertson what he needed to construct the canopy.

Mr. Robertson said that he thought Resolution A would allow for future improvements without the need to come back to the Board for an additional variance.

Hearing no further questions Mr. Geib closed the Public Hearing at 5:38 p.m.

Mr. Rodgers summarized his concerns and stated he had trouble finding a hardship that prevented the property from being used as it was intended.

Mr. Otey stated that this was the first setback issue he has seen where the setback is internal to the property. He also stated that he would support a variance to the edge of the bus loop which would reduce the setback to 20 feet from the center of the right-of-way.

Mr. Geib stated that he agreed that this issue was an unintended consequence when the bus loop was made part of the VDOT system.

Mr. Rhodes stated that he was not comfortable granting a broad variance but would support a variance for this project.

Mr. Geib asked if someone would propose a motion to the Board.

Mr. Otey made a motion to approve Resolution B with an amendment to reduce the setback to the edge of the right-of-way.

Mr. Rhodes seconded the motion.

Mr. Geib asked Ms. Parrish to call the roll.

On a roll call vote, the Board voted to approve the variance described in Resolution B with an amendment to reduce the setback to the edge of the right-of-way. (3-1)

## **E. MINUTES**

### **1. April 6, 2017 Minutes**

Mr. Geib asked if anyone had any comments or corrections to the April 6, 2017 minutes.

Mr. Rodgers had one minor correction.

Mr. Geib had one minor correction.

Mr. Geib motioned to approve the minutes as amended.

Mr. Rodgers seconded the motion.

Mr. Geib asked Ms. Parrish to call the roll.

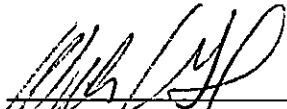
On a roll call vote, the Board voted to approve the April 6, 2017 minutes, with the corrections. (4-0)

**F. MATTERS OF SPECIAL PRIVILEGE**

None

**G. ADJOURNMENT**

There being no further business, Mr. Geib adjourned the meeting at 5:58 p.m.

  
\_\_\_\_\_  
William Geib, Vice Chair

  
\_\_\_\_\_  
Christy H. Parrish, Secretary